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Bugging

A federal appeals court Tuesday buttressed Daniel Ellsberg's chances to win money damages from the federal government for illegal wiretaps he said violated his rights in the Pentagon Papers episode.

The U.S. Circuit Court of Appeals for the District of Columbia ruled Ellsberg and others must be given the names of former attorneys general who authorized the warrantless bugging.

Using those names, the parties may try to prove their constitutional right against unreasonable search and seizure was violated unless the Justice Department can prove the foreign surveillance wiretaps were legal, a three-judge panel said.

Ellsberg is a former Defense Department analyst who sparked the historic Pentagon Papers confrontation by giving the top secret papers to The New York Times. In 1971, the Supreme Court allowed The Times and The Washington Post to publish the secret report on American involvement in Vietnam.

The government later accused Ellsberg and Anthony Russo Jr. of espionage, theft and conspiracy. During the criminal prosecution, the men learned of the government's warrantless electronic surveillance and sued for money damages from federal agencies for violating their rights.

Named in the suit were the nine heads of agencies, including Attorney General John Mitchell, Secretary of State William Rogers and Central Intelligence Agency head Richard Helms.

Claiming the "state secrets" privilege, the federal government said it could not reveal details of the warrantless electronic surveillance because of national security reasons.

Ellsberg and others lost the first round in 1973 when a federal district court ruled against compelling Mitchell and his government colleagues to furnish the information.

But in 1977, the case was reopened and government testimony showed that Ellsberg, noted attorney Leonard Boudin and others had been overheard on foreign intelligence wiretaps.

Ellsberg pressed for more details, but a federal judge ruled against further disclosures on grounds the information "would reveal sensitive governmental matters related to the national defense and international relations of the United States."

The three-judge appeals court panel reversed the ruling, wiping away the government's arguments that merely asserting the "state secrets" privilege was enough.

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